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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF ARIZONA**

8 Benton Gene Baskin,
9 Plaintiff
-vs-
10 Todd Thomas, et al.,
Defendants.

CV-21-1890-PHX-SPL (JFM)

Order

11 Plaintiff seeks a 30-day, first extension of the August 1, 2023 deadline to respond
12 to the Order to Show Cause (Doc. 40) issued July 17, 2023, citing as cause delayed
13 delivery of the Order to Show Cause. (Motion to Extend, Doc. 43.)

14 In light of the existing delay in the case from the pending Motion for
15 Reconsideration (Doc. 40), and the additional delay likely to result from awaiting
16 additional briefing, the Court finds further briefing unnecessary to a fair adjudication of
17 the motion.

18 The Motion was received by the Clerk on August 7, 2023. It was dated August 1,
19 2023, and includes a certification that Plaintiff deposited in the U.S. Mail on that date.
20 Because Plaintiff does not certify that he delivered it to prison officials for mailing, the
21 prison mailbox rule does not apply. Accordingly, the motion is untimely, and may only
22 granted upon a showing of excusable neglect, Fed. R. Civ. P. 6(b), taking into account: (1)
23 the danger of prejudice to the other party; (2) the length of the delay; (3) the potential
24 impact on judicial proceedings; (3) the reason for the delay; (4) whether the delay was
25 within the reasonable control of the movant; and (5) whether the movant acted in good
26 faith. *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380,
27 395 (1993).

28 The Court finds excusable neglect. Defendants have pending a Motion for

1 Reconsideration (Doc. 41) of portions of the Order to Show Cause. Thus, no **prejudice**
2 would be expected to result from Plaintiff's delay, and the **judicial proceedings** will not
3 likely be significantly impacted. Plaintiff provides evidence he received the Order on
4 Wednesday July 26, 2023, and submitted for mailing the instant motion on Tuesday,
5 August 1, 2023. Given the ordinary restrictions on inmates in litigating, this **delay** was
6 not long. The **reason** for the initial delay was the delayed delivery. This delay was not
7 reasonably within Plaintiff's **control**. There is no reason to assume Plaintiff is not acting
8 in **good faith**.

9 However, Plaintiff proffers no good cause to grant any additional time beyond that
10 attributable to the delay in delivery, or an additional nine days (*i.e.* until August 10, 2023)
11 plus a reasonable time for Plaintiff's receipt of the instant Order. By that time, Plaintiff
12 will have had almost four weeks from his receipt of the Order to respond.


13 **IT IS THEREFORE ORDERED:**

14 (A) Plaintiff's Motion to Extend (Doc. 43) is **GRANTED**.

15 (B) Plaintiff has through **August 21, 2023** to respond to the Order to Show Cause (Doc.
16 40).

17 Dated: August 9, 2023

18 21-1890-043o Order 23 08 08 on Motion to Extend.docx

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James F. Metcalf
United States Magistrate Judge